

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEVIN T. LAVERY, M.D.,

Case No. 22-CV-10613

Plaintiff,

Hon. Bernard A. Friedman

v.

PURSUANT HEALTH, INC.,

Defendant.

EXHIBIT 1

REDACTED VERSION OF DOCUMENT TO BE SEALED

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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6 KEVIN T. LAVERY, M.D.,

Plaintiff,

Case Number:

vs.

2:22-cv-10613-BAF-KGA

PURSUANT HEALTH, INC.

Defendant.

THE VIDEOTAPED DEPOSITION OF KEVIN LAVERY, M.D.

The videotaped deposition of Kevin Lavery, M.D. taken at 740 West Michigan Avenue, Jackson, Michigan, on **Tuesday, January 31, 2023**, commencing at about 9:05 in the morning, pursuant to notice.

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1 going to replace a full eye exam. And they
2 didn't want to give up their full eye exam and
3 the charge and the fee and the patient.

4 And so I proposed that we only screen
5 people who hadn't been seen in two years, and
6 they still objected.

7 And at that point the idea came to me,
8 let's just take them all out of the equation.
9 Let's change how we provide this and really make
10 a difference and put these in malls and
11 pharmacies and grocery stores and make it
12 accessible to people and what would it take to
13 do that.

14 So how can we bring a [REDACTED]
15 exam out to people to make a difference in the
16 community from a community health perspective.
17 And that was -- that was the original genesis of
18 the idea.

19 Q And this is helpful. What's the timeframe for --
20 you described the idea of doing a screening on
21 the square and 2,000 people showed up. Do you
22 remember roughly when that -- when that took
23 place?

24 A That was probably in 1995, '6.

25 Q So the ideas that you've described with the

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1 screening on the square, wanting to make
2 screening more accessible, the sort of
3 disagreement you had with other ophthalmologists,
4 that was all in the mid-to-late '90s?

5 A So that would have been -- correct. So some --
6 the application -- the application was submitted,
7 I believe, in 2000 for the patent. So it was
8 somewhere probably in the year, year-and-a-half,
9 two years before that 2000 date. So late '90s
10 would be my guess. I hate to guess.

11 Q And when you say application, you're talking
12 about the original patent application with your
13 invention was submitted in 2000, is that correct?

14 A I believe that's when it was submitted.

15 Q And in your own words, what was the idea that was
16 submitted in the application to the patent office
17 in 2000? What was -- what was the original idea
18 that you -- for which you sought a patent?

19 MR. INOENCIO: Objection, form.

20 You may answer.

21 THE WITNESS: To create a medical kiosk
22 that could obtain all sorts of information and
23 communicate that directly to the doctors' offices
24 that were involved. Trying to get more patients
25 to get early diagnoses of eye disease. Not just

1 eye diseases, of diseases.

2 BY MR. BUSH:

3 Q And you said to [REDACTED]

4 [REDACTED]
5 offices. What kind of information was embodied
6 in your patent for capturing from a potential
7 patient through the medical kiosk?

8 A So obviously the primary one was having the
9 retinal camera built in. A retinal camera gives
10 you all sorts of information. It allows you to
11 [REDACTED]

12 [REDACTED]
13 [REDACTED]

14 It allows you to [REDACTED]
15 changes. And again, early intervention to
16 prevent vision loss. [REDACTED]

17 [REDACTED]
18 But in addition to just the eye health,
19 the patent included the ability to put a blood
20 pressure cuff on the unit. It talked about
21 having spirometry, checking emphysemic patients.

22 So you have to sort of flash back that,
23 you know, the internet wasn't that old at this
24 point. And so, you know, the iPhone -- if you
25 can imagine 2007. This was kind of early on with

1 things.

2 And so one of the big ones with
3 diabetics was glucose testing. So maybe we would
4 do some glucose testing on the side of the
5 machine.

6 We talked about the need to get

7 [REDACTED]
8 them. Getting their [REDACTED]
9 [REDACTED]

10 So it was open broadly enough -- it
11 wasn't in the patent, [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 So we could add on a lot of
15 functionality to that original platform.

16 Q And all that you described, this is part of your
17 original idea that was essentially the patent
18 application, correct?

19 MR. INOENCIO: I didn't catch the
20 question. That was what?

21 MR. BUSH: That was part of the original
22 patent application. The idea that was a part of
23 the original patent application.

24 MR. INOENCIO: Thank you.

25 THE WITNESS: Can you ask that question

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1 one more time?

2 BY MR. BUSH:

3 Q I just want to understand everything that you've
4 told me about the sorts of information that could
5 be captured. [REDACTED]

6 [REDACTED]

7 A I didn't mention [REDACTED]

8 Q That's what you said when you were describing the
9 vision screening that could take place for the
10 patient utilizing the medical kiosk. And you
11 described a blood pressure cuff, glucose testing,
12 potentially capturing different demographics, the
13 weight of the patient, potentially hearing
14 testing.

15 And my question is, all of those
16 different potential functionalities of the
17 medical kiosk, that was captured in the idea that
18 was the subject of the patent application,
19 correct?

20 A Well, the hearing was not mentioned in the
21 patent. I did mention in the patent spirometry
22 for emphysemic patients.

23 And in the patent itself, we didn't
24 mention all of the -- some of those things like
25 the macular degeneration and some of those things

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1 were not mentioned in the patent.

2 Q Okay.

3 A So we talked in the patent mostly, I believe,
4 about diabetic retinopathy and glaucoma. I was
5 alluding to what a retinal picture could provide
6 for you. Not all of those things were mentioned
7 in the patent.

8 Q But some of the things you mentioned were
9 specifically itemized in the patent, correct?

10 A Some of the things absolutely were.

11 Q And you also said that the idea that was the
12 subject of the patent application could capture
13 the different sorts of information and
14 communicate that information to doctors' offices.

15 How would that information be
16 communicated to doctors' offices in the idea that
17 was submitted in the patent application?

18 A So there would be a computer on -- you know,
19 internally in the unit. There was a number of
20 different pathways for communication.

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 If the patient knew their doctor's

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1 reads, 'The entire operation of the apparatus is
2 automated so as to simplify its use by numerous
3 users when the apparatus is placed in a public
4 location such as a shopping mall, et cetera.'

5 Do you see that?

6 A Yes.

7 Q And is that a reference to what you described
8 earlier as having -- based on your idea to place
9 these kiosks in high traffic public locations?

10 A Well, it was more than that. So from a business
11 model, [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 And so part of the genesis of this was

17 [REDACTED] So if
18 I could [REDACTED]

19 [REDACTED]
20 I like that business a lot better.

21 Q And you used the word [REDACTED] What was
22 your conception of [REDACTED]

23 [REDACTED]
24 A So there's lots of aspects to [REDACTED]
25 And ultimately that's what got Bart so excited.

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1 So there's a lot of ways to make money
2 off of this retinal camera. The most obvious is
3

4 [REDACTED] And that's easy to do. I'm just going to
5 look for something here. And that could work.

6 [REDACTED]
7 [REDACTED] And so
8 one of the things that our business really strove
9 to do was [REDACTED]
10 the work, and have -- [REDACTED]

11 [REDACTED]
12 [REDACTED]

13 So we didn't need [REDACTED]
14 [REDACTED] for glasses. And so you're
15 trying to find out [REDACTED]

16 [REDACTED]
17 And so if I hypothetically owned this
18 machine at [REDACTED]
19 parked at malls around the area, I'm looking now
20 for [REDACTED]

21 So whether or not they have early
22 diabetic retinopathy or whether they have glaucoma
23

24 [REDACTED]
25 [REDACTED]

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1 And so as I'm looking at those screened
2 images, and I own that, I'm going to read those
3 images. I may be able to get -- and we talked
4 about [REDACTED]
5 [REDACTED]
6 of ways to leverage [REDACTED] to this.

7 But now that I have that picture and
8 I've read it, I can do several things with it. I
9 can look at a reasonably healthy eye exam and say
10 [REDACTED]
11 [REDACTED] [REDACTED]
12 [REDACTED]

13 So [REDACTED] now is
14 thrilled because [REDACTED]
15 [REDACTED] or
16 whatever.

17 And if the patient has pathology, I can
18 [REDACTED] So the diabetic who
19 just hasn't been able to get into the eye exam,
20 [REDACTED] saying, you
21 know, [REDACTED]
22 really think you should come in, chances are
23 they're going to take that bus and get in or get
24 a ride or do the things that are really hard for
25 them to actually come in for their eye exam.

1 And so we could screen for the

2

3 treatments and the diabetics and the glaucoma.

4

5

6

7

I also thought with insurance, though --

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I can't remember the name of the word for that.

19

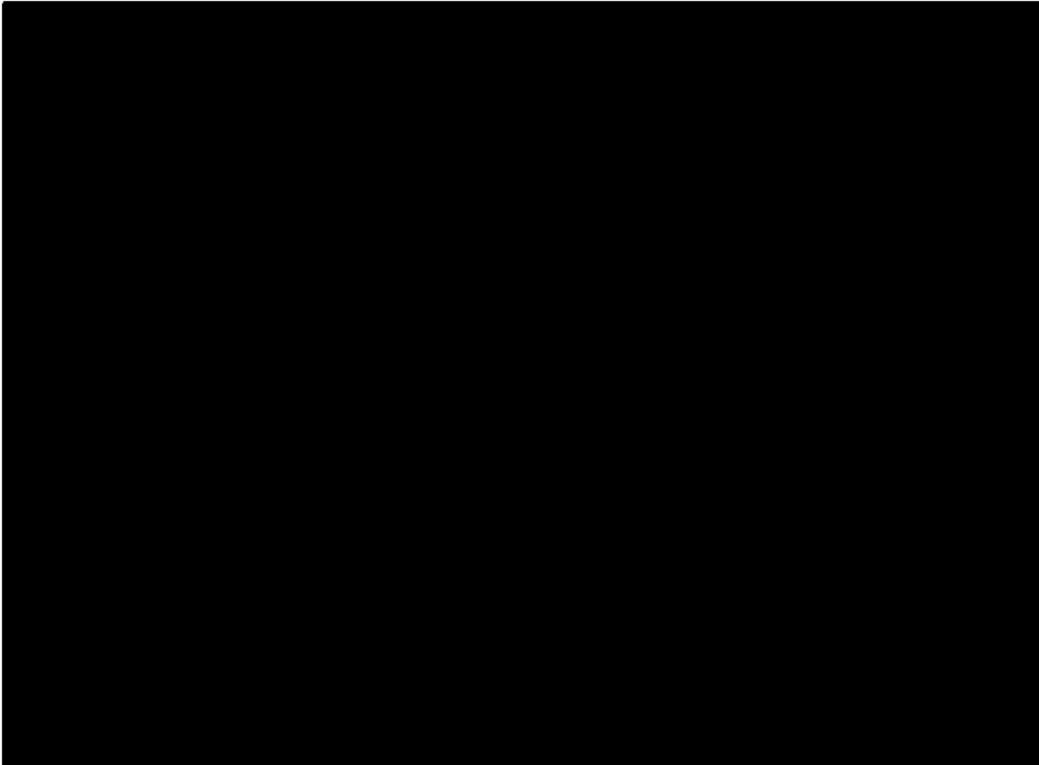
20 And so it was difficult for them to get
21 diabetic patients, which was a simple exam, into
22 a medical doctor to get that testing done. But
23 it was needed.

24

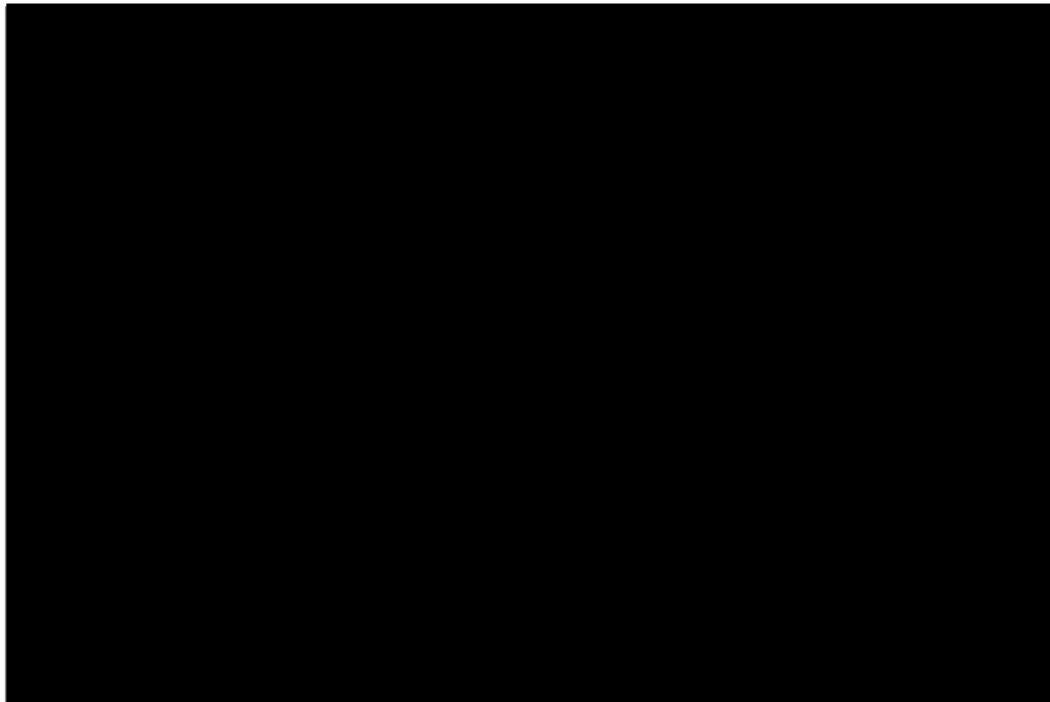
25

 And so if we could provide this out in
 a remote location, and it's now approved, you

1 know, telecommunication has taken off of late.
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14 patient's vision. And I think that would work.
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25



1 again, there could be a [REDACTED]
2 [REDACTED]
3 You know, if we created [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]

12 Q And all of these dimensions for this idea of a
13 business model about which you've given
14 testimony, these were all ideas that you had at
15 the time of the patent --

16 A Correct.

17 Q -- when the patent was issued? And these ideas
18 that you had for these different ways of
19 capturing the business model that you've
20 described, these were all part of the ideas that
21 were embodied in the application that became the
22 patent that we've marked as Exhibit 3?

23 A So this is -- these are the things that were
24 going to bring, in my mind, the patent to life.

25 Q But they were related to and part of the things

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1 that were the inventions in the patent itself,
2 correct?

3 A The patent played a key central role in making
4 all of these things happen.

5 Q And when you say these things, you're talking
6 about the business model dimensions that you
7 testified about earlier?

8 A Well, the business model. But creating a way to
9 save vision and change the world. To change
10 health care. To make eye exams more accessible
11 to people around the world. To make a
12 difference.

13 Q Are there any other key aspects of the patented
14 invention that you haven't yet described in your
15 testimony so far this morning?

16 MR. INOENCIO: Objection, vague.

17 BY MR. BUSH:

18 Q Do you understand my question?

19 A Omissions are really hard to see.

20 Q I understand. But sitting here today, are you --
21 are you comfortable that you've described to the
22 best of your knowledge the concept, the patented
23 idea, the invention, the novel and unique concept
24 that you arrived at in the late '90s or early
25 2000s, is there anything else about it that you

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1 Q And what is -- this reference to a [REDACTED],
2 what does that -- what does that mean to you as
3 an ophthalmologist?

4 A So a [REDACTED]
5 specifically [REDACTED] to look
6 at [REDACTED] to look at the retina, to look at
7 the film in the camera, as it were, that takes a
8 picture [REDACTED].

9 Q And in your understanding, what is the difference
10 between a [REDACTED]

11 A In general, there isn't any. However, I don't
12 know if a [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 Q And looking at that same paragraph in
18 Mr. Foster's patent, the last sentence reads,
19 'In still another embodiment the results are
20 reported at the user kiosk or via the internet
21 to a third party.' Do you see that?

22 A I do.

23 Q And did you come to understand at the time that
24 you first interacted with Bart Foster that Bart
25 Foster's patent included the concept of a

1 communication via the internet?

2 A That was not mentioned to me, no.

3 Q When was the very first time that you reviewed
4 Mr. Foster's patent that we've marked as
5 Exhibit 4?

6 A Yesterday.

7 Q And did you reach any conclusions yesterday when
8 you read Mr. Foster's patent for the first time?

9 A The striking one is that he applied for his
10 patent after mine was already issued. So mine
11 was already in the public domain when he applied
12 for his.

13 Q Did you ever discuss that issue with Mr. Foster?

14 A No. The other feature was that it was really
15 driven towards vision. So while some things are
16 mentioned, it was really a vision screening
17 device.

18 Q As opposed to a retinal camera device?

19 A Correct.

20 Q Let's look at what we will mark as Exhibit 5.

21 (Exhibit 5 is marked.)

22 BY MR. BUSH:

23 Q I've handed you, Dr. Lavery, a document we've
24 marked as Exhibit 5. And I'll represent to you
25 that this is a document generated by Bart Foster

1 BY MR. BUSH:

2 Q Dr. Lavery, do you recognize the document we've
3 marked as Exhibit 8?

4 A I saw a redline version yesterday in preparation
5 for this today, yes.

6 Q And Exhibit 8 is an executed version of a [REDACTED]
7 [REDACTED] between yourself and Bart Foster, is
8 that correct?

9 A It says draft. Does that impact the --

10 Q If you'll look at page five of the document,
11 there are signatures on this version. Do you see
12 that?

13 A I do.

14 Q And you agree that this is an executed [REDACTED]
15 [REDACTED] between yourself and Mr. Foster?

16 A I agree it's a [REDACTED] and there are
17 signatures. But I don't know legally what draft
18 means. If that somehow invalidates it somehow?
19 I don't know.

20 Q So you question whether the document we marked as
21 Exhibit 8 is legally binding because it says
22 draft at the top of the first page?

23 A I'm not -- I'm just raising -- I'm stating what I
24 don't know. I'm not a lawyer and I don't know
25 what that means. So that's all I'm saying.

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1 Q Can you tell me your memory as to how this [REDACTED]
2 [REDACTED] came about in 2007?

3 A Yes.

4 Q How did it come about?

5 A Bart had contacted me and reached out to me by
6 phone, told me what he was doing. He was trying
7 to start a company. He saw my patent. Really
8 loved what my patent would do. And we started
9 having discussions.

10 And so he wanted to come up and meet
11 with me. It was a -- unlike today, a wonderful
12 day in Michigan where we could sit outside. We
13 sat by the tennis courts at the country club of
14 Jackson.

15 We absolutely hit it off. Bart, as you
16 know, is very charismatic, very energized, very
17 bright, very engaging.

18 And because of that meeting and through
19 discussions, I was able to show Bart that he was
20 looking at the universe too small by just doing
21 vision screening alone with the hope of maybe
22 selling contact lenses and having obstruction in
23 the industry fighting him at every step of the
24 way.

25 And I shared with him my vision of being

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1 disruptive in the field of eye care and
2 ophthalmology, and Bart got really excited.

3 So when we first had the conversations,
4 Bart never stated this, but wanted to get access
5 to my patent. After reading his deposition, I
6 know why. Because he needed it to get the other
7 [REDACTED]

8 But at the time, he bought into my plan
9 to change how eye care is delivered. And through
10 lots of discussions about how we could change
11 the world, he decided not to just have me as a
12 royalty owner that he just wrote a check to on a
13 quarterly basis, but he said let's start a
14 business together.

15 [REDACTED]
16
17
18
19
20 And I never touted that. I never,
21 like, celebrated that. Bart was always the
22 perfect front person. And I was kind of the
23 quiet guy in the background.

24 But I sold Bart on what we could do in
25 the universe of health care and where we could go

1 after [REDACTED]
2 the [REDACTED] and the
3 [REDACTED]
4 [REDACTED]
5 that [REDACTED] was going to pay you for -- [REDACTED]
6 doesn't want to pay anybody for anything.

7 So through a process of those
8 discussions, Bart wanted me at the table with my
9 ideas. And as he said at his deposition, Kevin
10 had tons of ideas. And we worked together.

11 And so we -- I founded SoloHealth. I'm
12 one of the founders in my mind. And I think the
13 documents support that.

14 And so Bart saw that I had contacts in
15 the industry, that I had been talking to lens
16 manufacturers, that I knew optometry well. I had
17 been speaking at big optometric national
18 meetings. I had a [REDACTED]
19 network.

20 I knew ophthalmology. They didn't know
21 ophthalmology. [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 And so between all of the different
25 things that -- you know, the businesses I've run,

1 the contacts, the knowledge in medicine, he
2 wanted me at the table. He wanted access to
3 those ideas.

4 And that's why we talked as much as we
5 did even after the closing and starting the
6 business. He ran most ideas by me before
7 implementing them.

8 So you know, Bart saw in me an idea guy
9 that he didn't have to areas of medicine that he
10 didn't even know about. I had to explain
11 diabetic retinopathy to him.

12 And so, you know, through those
13 interactions over the course of a relatively
14 short period was 'I want you as an owner and I
15 want you at the table.'

16 Q And this first phone call that you described that
17 you received from Bart Foster, do you remember
18 when that phone call took place?

19 A I do not.

20 Q Sometime in 2007 before the date of the document
21 we've marked as Exhibit 8?

22 A Correct.

23 Q Do you believe it was a couple of weeks before or
24 a couple of months before? What's your best
25 memory about the timing of that phone call from

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1 Q Can you identify Exhibit 9 for the record?

2 A I think at closing this was the [REDACTED]
3 agreement that was signed.

4 Q Is it fair to say that Exhibit 9 is the
5 definitive agreement that was contemplated by the
6 [REDACTED] that we marked as Exhibit 8?

7 A [REDACTED]

8

9 Q I appreciate that. My question is, is it fair to
10 say that the document we marked as Exhibit 9 is
11 the agreement -- the final agreement that was
12 contemplated by the [REDACTED] that we
13 marked as Exhibit 8?

14 MR. INOENCIO: Objection, form.
15 You may answer.

16 THE WITNESS: So other than the fact
17 that the document was changed between when I
18 signed off on it with my lawyer on Saturday and
19 the document that I signed on Thursday when there
20 was an alteration made to the document without my
21 knowledge, yes, this was the intent of the
22 document.

23 BY MR. BUSH:

24 Q This was the -- the document we marked as
25 Exhibit 9 is the intent of the document that we

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1 previously marked as Exhibit 8, correct?

2 A Except for the alterations that I was unaware of.

3 Q What are the alterations that were made to the
4 document we marked as Exhibit 9 that you claim
5 you had no knowledge of?

6 MR. INOENCIO: Objection. It misstates
7 his testimony. Exhibit 9 is the signed
8 agreement, right?

9 THE WITNESS: Correct. Oh, and the
10 Letter of Intent is 8.

11 BY MR. BUSH:

12 Q Do you understand my question?

13 A Apparently not.

14 Q All right. We'll start over. I just asked you
15 whether Exhibit 9 is the document that's
16 contemplated by Exhibit 8. And I believe you
17 told me that Exhibit 9 is the document that was
18 the intent of Exhibit 8.

19 Exhibit 9 is the final document of the
20 document that's contemplated in the [REDACTED]

21 [REDACTED] we marked as Exhibit 8, correct?

22 A Except for the change that was altered, yes.

23 Q So tell me about the change that was altered that
24 you just -- that you just referenced.

25 A So in -- Version 7 of the document, I have the

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1 numbers here, was sent out by Brian Gordon on a
2 Saturday at two something in the afternoon. A
3 redline agreement saying -- so let me back up a
4 little bit.

5 So earlier that week, one of my sort of
6 deal breakers was when we went from the [REDACTED]

7 [REDACTED]
8 [REDACTED] And it got all
9 sorts of convoluted with add-ons and subtract
10 backs. And you had to have a retinal camera.

11 And so at the end of the day, I didn't
12 know what was really going to happen with all of
13 that. And so I said I want a one percent
14 perpetual agreement. You know, an intellectual
15 property payment. And so on October 4th that was
16 agreed to.

17 There was an email I've seen which
18 delineates between Brian Gordon and Tom Spillane
19 exactly what the agreement was supposed to say.
20 And it states clearly that there will be a one
21 percent perpetual IP payment.

22 And then the three percent was only when
23 the retinal camera was there, it was only for the
24 life of the patent, and the three percent went
25 away when the patent expired. I'd revert back to

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1 a one percent forever. And that was all spelled
2 out really nicely in that email exchange.

3 Brian Gordon put in the word perpetual.
4 I believe on, like, October 4th. And that was
5 inserted.

6 And Version 7 here shows the word
7 perpetual for the first time in the [REDACTED]
8 [REDACTED]

9 Section A, the word perpetual was inserted on
10 page two to delineate that this was a perpetual
11 royalty on the one percent.

12 Everybody signed off on that. And the
13 note -- the email says if this is the final
14 document, we will sign this, and it may have been
15 alluded to as a Monday. The closing didn't take
16 place until Thursday.

17 So my lawyer said I've signed off on the
18 agreements, I don't need to be at the table. You
19 know, everything is approved and clean.

20 During the discovery process, I came to
21 realize the document that I signed, Version 8,
22 had words inserted that were not in the final
23 agreed-upon version, Version 7.

24 And they inserted the words in -- on
25 page two, under royalty, 1.2, after the increase

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1 of the three percent they inserted the words 'for
2 the remainder of the term.'

3 Those words, 'for the remainder of the
4 term' were not in the agreement that I had agreed
5 to on Saturday before the closing and which my
6 lawyer had agreed to.

7 And so that's the reason we're here
8 today, is we're debating over the one percent
9 because of words that were put in that nobody is
10 owning to. Brian Gordon doesn't remember it,
11 Bart Foster doesn't remember, other legal counsel
12 doesn't remember.

13 But those words were put in without any
14 approval by me, by my lawyer. I'm some doc from
15 a hillbilly town in Michigan who's sitting down
16 to sign a document and I felt like I was tricked.

17 Q And when in your memory did you first come to
18 believe that these words, 'for the remainder of
19 the term' had been added to the agreement without
20 your -- without your knowledge?

21 A So at closure when I looked at that statement, I
22 asked Brian Gordon -- I said Brian, this is --
23 this is the crux of what we're discussing here
24 today. Everything else about whether or not I
25 get the three percent and this and that, but the

1 crux of it is this one percent. Can you walk me
2 through this one percent?

3 And Brian took me through line by line.
4 And what he said -- because I saw that when I
5 read that there. And I didn't remember it, but
6 you know, I've got six, seven, eight people
7 around the table at closing.

8 And he said, oh, that term only applies
9 to the patent portion of the three percent, the
10 retinal camera. That does not affect the one
11 percent royalty perpetual. And those were his
12 words that I definitely remember.

13 Because I was not going to sign that
14 document until he was clear to me that that one
15 percent was perpetual. And he fully assured me
16 that that was perpetual.

17 And unfortunately we're here today
18 because of alterations made to the document,
19 sadly.

20 Q So you had this conversation that you described,
21 this conversation that took place with
22 Mr. Gordon, you had that conversation before you
23 agreed to sign the final version, correct?

24 A Correct. It was at closing.

25 Q And you agreed to sign the final version after

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1 you had seen a version of this agreement that
2 included the words 'for remainder of the term,'
3 correct?

4 A After it was explained to me by counsel what it
5 meant in his mind that agreed with what it meant
6 in my mind.

7 Q And the explanation from counsel was an
8 explanation that was given to you by counsel for
9 SoloHealth?

10 A Correct.

11 Q Who else was at the closing that you described?

12 A I think Fred Baumbarner [sic] was there. I don't
13 remember the other participants.

14 MR. INOENCIO: Do you mean Fred
15 Baumbach?

16 THE WITNESS: Baumbach, yes.

17 MR. INOENCIO: It's okay.

18 THE WITNESS: Sorry.

19 BY MR. BUSH:

20 Q Do you remember roughly how many people attended
21 the closing?

22 A Seven or eight, perhaps.

23 Q And those seven or eight individuals were
24 representatives of SoloHealth or counsel for
25 SoloHealth or yourself?

1 A I was there as an individual. So everybody else
2 would have been related to SoloHealth or counsel
3 for SoloHealth.

4 Q Was your counsel present?

5 A He was not.

6 Q And you were in person present for the closing of
7 [REDACTED]

8 A Correct.

9 Q And that closing took place where?

10 A I believe at the offices of DLA Piper in Atlanta.

11 Q Now, at the closing, did you provide anything
12 other than the patent to SoloHealth?

13 A I'm not sure what you're asking.

14 Q Did you provide any intellectual property to
15 SoloHealth at the closing other than the
16 assignment of your patent?

17 A [REDACTED]

18 Q [REDACTED]

19 A [REDACTED]

20 Q [REDACTED]

21 A [REDACTED]

22 Q [REDACTED]

23 A [REDACTED]

24 Q [REDACTED]

25 A [REDACTED]

1

2

3

4 A I don't believe there was one at closing, no.

5 Q Did you come to work on a business model for

6

7

8 A

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10

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12

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16

17

18 Q

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22

MR. INOENCIO: Asked and answered.

23

You may answer.

24

THE WITNESS: I don't believe so.

25

BY MR. BUSH:

1 Q Now, at the closing did you present any sort of
2 [REDACTED]

3

4 A [REDACTED]

5 Q [REDACTED]

6 A Not asked for, not provided.

7 Q [REDACTED]

8

9

10 A [REDACTED]

11 Q [REDACTED]

12

13

14

15

16 A I'm not sure what your question is asking, I'm
17 sorry.

18 Q [REDACTED]

19

20

21 A [REDACTED]

22

23 Q I'm going to give you a document that we will

24 mark as Exhibit 10.

25 (Exhibit 10 is marked.)

Page 76

1 discussions and looking for partners was all done
2 to help the company not -- presumably under the
3 [REDACTED]
4
5
6
7

Q And during the time in which you were providing
8 [REDACTED]
9

10 A A start-up is a very fluid thing. And so you're
11 always trying and failing and trying and failing.
12 [REDACTED]
13

14 But that's always on your brain as a start-up
15 company. What are we going to do to drive
16 revenue? So that's never off your brain.

17 Q [REDACTED] in
18 connection with providing consulting services or
19 [REDACTED]

20
21 business model?

22 A [REDACTED]
23
24 models for them to pursue and revenue sources.
25 Once we started rolling out the vision

1 plan, the vision screening alone with no other
2 [REDACTED]
3
4
5
6
7

8 Q And you have alleged in this litigation that your
9 ideas for a business model is a protected trade
10 secret. Is that right? Is that your allegation?
11 A [REDACTED]

12 the answer is yes. But I think it's still what
13 SoloHealth should do. And nobody is doing it
14 yet. And so it's still, like, the answer. So
15 absolutely that's my business model that I hope
16 they employ.

17 Q [REDACTED]
18
19
20

21 A [REDACTED]
22
23

24 Q And in what way was that outlined?
25 A Bart and I had lots and lots of conversations and

1 I walked him through how to make that work.

2 Unfortunately, having read his
3 deposition, I now know that wasn't his priority.
4 His priority was getting the vision screening and
5 what he refers to as his baby out there.

6 I was trying to get my baby out there.
7 And my baby is still retinal camera screening and
8 doing all of this other stuff.

9 And I'm still hoping it's going to
10 happen.

11 MR. BUSH: We'll mark Exhibit 11.

12 (Exhibit 11 is marked.)

13 BY MR. BUSH:

14 Q Do you recognize the document we've marked as
15 Exhibit 11?

16 A Yes, I do.

17 Q And do you recognize Exhibit 11 to be responses
18 on your behalf to document requests that were
19 served as discovery in this litigation matter?

20 A Correct.

21 Q And looking at page 11 and 12, the request for
22 production 16 and your response to that on page
23 12. This is a request for any documents
24 evidencing confidentiality agreements specific
25 to a business model. Do you see that?

Page 79

1 A Yes.

2 Q And your response is that you're unaware of any
3 documents evidencing any efforts to maintain the
4 secrecy of the business model that's described in
5 your response to interrogatory number 7, do you
6 see that?

7 A Yes.

8 Q Is that a true statement?

9 A Yes.

10 Q And looking at page 10 of the same exhibit,
11 there's the request for production 13 that seeks
12 documents evidencing confidentiality agreements
13 around efforts to maintain the secrecy of the
14 demonstration video. Do you see that?

15 A I do.

16 Q And your response is that Plaintiff is unaware of
17 any documents evidencing any efforts to maintain
18 the secrecy of the demonstration video which was
19 used for proof of concept as described in your
20 response to interrogatory number 7; do you see
21 that?

22 A Yes.

23 Q Is that a true statement?

24 A Yes.

25 Q And you testified earlier that you believe that

1 the business model ideas that you provided to
2 Bart Foster are protectable trade secrets.

3 Did I remember that correctly?

4 A I don't believe we talked about -- I don't think
5 we've addressed that, have we?

6 Q My memory is that we did. I may -- I may have
7 it wrong.

8 Do you allege in this litigation that
9 the ideas that you collaborated with Bart Foster
10 around a business model and iterations for a
11 business model, that those ideas on your part are
12 protectable trade secrets?

13 A Yes.

14 Q And what's your basis for asserting that your
15 ideas around a business model for a medical
16 screening kiosk are protectable trade secrets?

17 MR. INOENCIO: I'm objecting to the
18 extent you're asking him to provide a legal
19 conclusion.

20 You may answer.

21 THE WITNESS: So if it was easy and
22 self-evident, other people would be doing it by
23 now.

24 And the fact that it's still the right
25 answer and nobody is doing it, I think I've kept

1 my secret pretty well, apparently.

2 BY MR. BUSH:

3 Q What steps have you taken to keep your ideas a
4 secret?

5 A When I dealt with the camera companies, I had
6 them sign nondisclosure agreements.

7 With Bart, partly because of the [REDACTED]

8 [REDACTED] I opened up with him. I mean, there
9 wasn't anything I was -- so that was game on,
10 let's get this happening if we can.

11 And so I didn't -- you know, other than
12 the [REDACTED] there wasn't a specific
13 document regarding trade secrets with Bart that I
14 know of.

15 MR. INOENCIO: Joel, I'm not trying to
16 cut off your line of questioning here, but when
17 you get to a good stopping point, can we take a
18 restroom break?

19 MR. BUSH: Sure. Now is good.

20 MR. INOENCIO: Okay.

21 THE VIDEOGRAPHER: We are off the record
22 and the time is 11:16 a.m.

23 (Break from 11:16 a.m. to 11:31 a.m.)

24 THE VIDEOGRAPHER: We are back on the
25 record and the time is 11:31 a.m.

1 BY MR. BUSH:

2 Q Going back on the record, Dr. Lavery. Your
3 counsel has also asserted in this lawsuit that
4 you provided to SoloHealth a method for
5 developing or implementing or expanding the
6 usage of a medical screening kiosk.

7 Are you familiar with that assertion?

8 A I don't know specifically what you're asking or
9 what the assertion is.

10 Q Your counsel has asserted that you claim as a
11 trade secret a method for developing or
12 implementing or expanding the usage of a medical
13 screening kiosk. Is that familiar to you?

14 A Correct.

15 Q

16

17

18

19 A

20

21

22 between Bart and myself.

23 Q Those were in informal discussions between you
24 and Mr. Foster?

25 A So one-on-one in person, on the phone. There may

Page 83

1 have been emails, I don't recall.

2 Q And looking back at the document we marked as
3 Exhibit 11 --

4 A I'm sorry. They're back --

5 MR. INOENCIO: They are in order.

6 THE WITNESS: Can I have yours? Oh,
7 they're in order. Thank you.

8 MR. INOENCIO: It's the very last
9 exhibit.

10 THE WITNESS: Thanks.

11 (Discussion off the record.)

12 BY MR. BUSH:

13 Q Looking at Exhibit 11, and pages 13 and 14,
14 there's the request for production number 19,
15 it's at the bottom of page 13, that seeks

16 [REDACTED]

17

18

19

20 kiosk; do you see that?

21 A I do.

22 Q And on the next page, your response to that
23 request is that Plaintiff is unaware of any

24 [REDACTED]

25

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5 A
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9 Q You didn't specifically ask that SoloHealth do
10 anything specific to protect any of the
11 information that you provided, correct?

12 MR. INOENCIO: I'm going to object to
13 the extent that you're mentioning now SoloHealth
14 but the question related to Pursuant Health.

15 BY MR. BUSH:

16 Q You can answer the question.

17 A So I apologize. I'm not trying to be difficult.
18 Can you repeat that one more time?

19 Q Yeah. First of all, the response at the top of

20
21
22
23

24 medical screening kiosk. Do you see that?

25 A I do.

1 MR. INOSENARIO: -- easier for the court
2 reporter.

3 THE WITNESS: Sorry.

4 BY MR. BUSH:

5 10

6

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8

9

0 A

11 9

13

13 Bart Foster around ideas for a method for
14 developing, implementing, or expanding the usage
15 of the medical screening kiosk?

16 A There's a lot of words there. Can you repeat
17 that again, please?

18 Q Yeah, we've talked a bit about this -- this
19 notion that you had ideas around a method --

20 A Yes.

21 Q -- for implementing, developing, or expanding the
22 usage of a medical screening kiosk.

23 And my question for you is did you
24 collaborate around your ideas on that method

1 day was, the thought of the day, the plan for the
2 day, getting ready for his board meetings.

3 Q What do you understand to be a trade secret?
4 What does trade secret mean to you?

5 MR. INOSENARIO: Objection to the extent
6 you're asking him to provide a legal conclusion.

7 BY MR. BUSH:

8 Q I'm asking for your understanding.

9 A A trade secret would be an idea that other people
10 haven't thought of yet. Or a mechanism to make
11 something work or how to integrate certain things
12 that hasn't been thought of before.

13 Q Do you have any understanding as to the
14 requirements for maintaining a trade secret?

15 A I do not.

16 Q Going back to Exhibit 9, the contribution
17 agreement, and I want to make sure I understand
18 your prior testimony about the words that you
19 believe were inserted at the end of the
20 negotiations without your knowledge.

21 Do you remember that testimony?

22 A I do.

23 Q And look with me at the top of page two under
24 paragraph 1.2, royalty. Can you point me to
25 where the language appears in that paragraph that

Page 92

1 you believe was inserted into the final agreement
2 without your knowledge?

3 A Absolutely. So after the parentheses. So
4 halfway down the paragraph, increased to three
5 percent, parentheses, 3%. And then the words
6 that were inserted were 'for the remainder of the
7 term, semicolon.'

8 Q And those are the words that you saw for the
9 first time at the closing and about which you had
10 the conversation with counsel for SoloHealth,
11 correct?

12 A Correct.

13 Q And looking down at the definition of products,
14 it's 1.2 subsection (e).

15 A Uh-hmm.

16 Q Do you see that?

17 A Yes.

18 Q And what is the definition of products under
19 this agreement?

20 A Do you want me to read it to you?

21 Q Please.

22 A 'Products underlined, in parentheses, shall mean
23 vision screening kiosks and any derivative or
24 complimentary applications.'

25 Q And you understand that your one percent royalty

Page 93

1 is tied to this definition of products as it
2 appears in the contribution agreement, correct?

3 A I thought it was related to net domestic sales.

4 Q If you'll look at the top paragraph, 1.2(a).

5 A Uh-hmm.

6 Q It says, 'A royalty, on a quarterly basis, of
7 one percent of the company's net domestic sales
8 of products for the prior quarter.' Correct?

9 A Yes.

10 Q And products is limited to a vision screening
11 kiosk, correct?

12 MR. INOENCIO: Objection. The
13 document speaks for itself. Are you asking him
14 to interpret --

15 MR. BUSH: I'm asking him his
16 understanding of this document.

17 THE WITNESS: It was all a derivative.
18 So if they had apps or things on their website
19 that, you know, related to that, that was all
20 part of it. So it was any complimentary
21 application and any derivative.

22 BY MR. BUSH:

23 Q So if Pursuant Health is no longer offering a
24 vision screening kiosk --

25 A Uh-hmm.

Page 94

1 Q -- you understand that you're not owed a one
2 percent royalty on a kiosk that does not
3 incorporate vision screening, correct?

4 MR. INOSENClO: Objection, it calls for
5 a legal conclusion.

6 BY MR. BUSH:

7 Q You can answer.

8 A If they did a vision screening on a phone and it
9 used the same sort of information that we did at
10 the kiosk, I would expect it to be covered as a
11 derivative of what they initially created in a
12 kiosk.

13 As technologies change and things morph,
14 it's still a derivative of the kiosk. And I
15 would still expect the one percent.

16 (Discussion off the record.)

17 BY MR. BUSH:

18 Q Before we mark and talk about Exhibit 12, can you
19 tell me what documents you brought with you here
20 today that you're referring to while you're
21 giving testimony?

22 A I have the original document that SoloHealth
23 would have signed that includes the contribution
24 agreement, the operating agreement, and the
25 consulting agreement.

Page 95

1 I have a redline of Version 7 of the
2 operating agreement that was agreed to on
3 Saturday. I believe that was -- I'm not sure.
4 What day did we sign this? It was the Saturday
5 before the Thursday.

6 Let me see the date of that. It was the
7 13th. So it was Saturday, I think it was the --
8 I can't do the math -- the 7th or 8th. I may be
9 off on the date. So any way, this is a redline
10 from that date.

11 I have a redline of the [REDACTED]
12 [REDACTED] And I have a note page -- to digress, I
13 had a significant stroke in August of '21 and it
14 wiped out my verbal center.

15 (Court reporter seeks clarification.)

16 THE WITNESS: My speech center. And so
17 I'm sort of a medical miracle, but I use other
18 parts of my brain to find words now.

19 And so I have some notes just in terms
20 of things that might be good to talk about.

21 MR. BUSH: Okay. Can I see those
22 notes?

23 THE WITNESS: Is he allowed to see
24 those?

25 MR. INOSENCCIO: Yes. Actually, we can

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1 MR. INOSENIO: It looks like this.

2 THE WITNESS: Yeah. No, it's just
3 where in the stack. Okay, I'm there with you.

4 BY MR. BUSH:

5 Q Do you recognize the document, Dr. Lavery, that
6 we handed you that we've marked as Exhibit 12?

7 A I do.

8 Q And you recognize this document as amended
9 discovery responses that your counsel served on
10 January 4th of 2023?

11 A I know they're responses. I don't remember if
12 they were amended or -- but yes, I recognize
13 these.

14 Q And these were served on January 4th of 2023,
15 correct?

16 A I don't know that, but --

17 Q There's a date at the last page.

18 A On the last page? Okay.

19 Q You agree that these were served on January 4th?

20 A Yes.

21 Q And looking with me at pages six and seven, your
22 amended response to interrogatory number 7, and
23 this response itemizes the three general
24 categories of things that you allege to be trade
25 secrets; correct?

1 MR. INOSENARIO: Can you give him a
2 minute to read the four pages that that
3 encompasses, or three pages that that encompasses
4 before he responds?

5 MR. BUSH: It's three sentences at the
6 bottom of page six and goes into the top of the
7 page seven.

8 MR. INOENCIO: Well, I would like him
9 to read the complete response before he responds.

10 MR. BUSH: That's fine.

11 MR. INOSENIO: Okay.

12 THE WITNESS: Okay, I think I've read
13 enough to hopefully be where you're at.

14 BY MR. BUSH:

15 Q So you understand that this response to

18 correct?

19 A Correct.

20 Q Were any of the items that are described in this

22 provide any of this to SoloHealth at the closing
23 of the contribution agreement?

24 A No.

25 O I'm giving you a document that we'll mark as

Page 101

1 A Okay. It's a long document, but --

2 Q I'll give you a moment to look through it.

3 A Okay. I see the document.

4 Q Did you ever complete the forms that are included
5 in the document that's marked as Exhibit 13 and
6 submit the completed information back to the
7 person who requested it?

8 A I would imagine I had to.

9 Q Well, we don't have that. Do you have a memory
10 of doing that or is it just your speculation
11 sitting here today that you did that?

12 A So the first blush is speculation that if I'm
13 moving forward with a legal deal and the lawyer
14 sends me documents to fill out to move forward, I
15 would think I would fill them out. So that would
16 be my presumption. If I read them or look at
17 these closer, let me see if it rings any bells.

18 Q Please, thank you.

19 A So I don't recall. I mean, the questions look
20 like good questions to ask and it looks sort of
21 familiar, but it also looks fairly lengthy and
22 onerous. And I don't know.

23 Q Do you remember identifying any trade secrets in
24 response to the request for information that you
25 received that we've marked as Exhibit 13?

Page 102

1 A I don't have the memory or remember what I filled
2 out 15 years ago this morning, no.

3 Q Did you -- do you remember reading this form 15
4 years ago?

5 A I don't.

6 Q Looking with me at Exhibit A to the document
7 we've marked as Exhibit 13. It has a Bates
8 designation at the bottom right of Lavery 001426,
9 do you see that?

10 A I don't see where you're looking at, no.

11 MR. INOENCIO: The bottom right corner
12 on this Exhibit A.

13 THE WITNESS: Oh.

14 MR. INOENCIO: That's our Bates label,
15 Lavery 1426. Bottom right corner.

16 THE WITNESS: Oh, I see. I'm on that
17 page, yes.

18 BY MR. BUSH:

19 Q And do you see at the top of that page it has
20 the heading 'trade secret questionnaire,' do you
21 see that?

22 A I do.

23 Q And the first paragraph provides an instruction
24 to you from the law firm about what can qualify
25 as a trade secret. Do you see that?

1 A I do.

2 Q Do you believe that you had information in 2007
3 that meets this definition provided by that law
4 firm for qualifying as a trade secret?

5 A I do.

6 Q And what were those things?

7 A [REDACTED]

8

9

10 Q And how was your formula for making a kiosk
11 successful a secret?

12 A Can you ask that question again?

13 Q Yeah. And I'll -- I'll refer you to the
14 instruction that you got from counsel which says
15 that --

16 A This counsel?

17 Q This counsel. In the document we marked as
18 Exhibit 13, it says that the law generally
19 provides that a trade secret is any information
20 or ideas which provide you with an economic
21 advantage over the competition --

22 A Uh-hmm.

23 Q -- or held in secret by you and for which you
24 maintain reasonable security measures to continue
25 them as a secret. Do you see that?

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1 A I did. But you interjected the word 'and' after
2 section three. 'And for --' you have to do all
3 three of those. And I read them as separate,
4 like three separate things.

5 Do you read them as 'and,' you have to
6 do all three?

7 Q Well, I'm looking for your testimony. So your
8 testimony --

9 A As you read the question to me, you added the
10 word 'and' for which you maintain reasonable --
11 You put the conjugation in there,
12 not me.

13 Q Respectfully, if you'll look at the paragraph and
14 look at the written language on the page.

15 A Okay.

16 Q The word --

17 A Oh, it is there. Sorry. Sorry. I'm trying to
18 read and I'm having trouble reading it. And I've
19 got it.

20 Q That's fair.

21 A The word is in there. Thank you.

22 Q I know I'm pushing you. It's all fair.

23 So you see that there are three things
24 that are required for maintaining a trade secret?

25 A I do.

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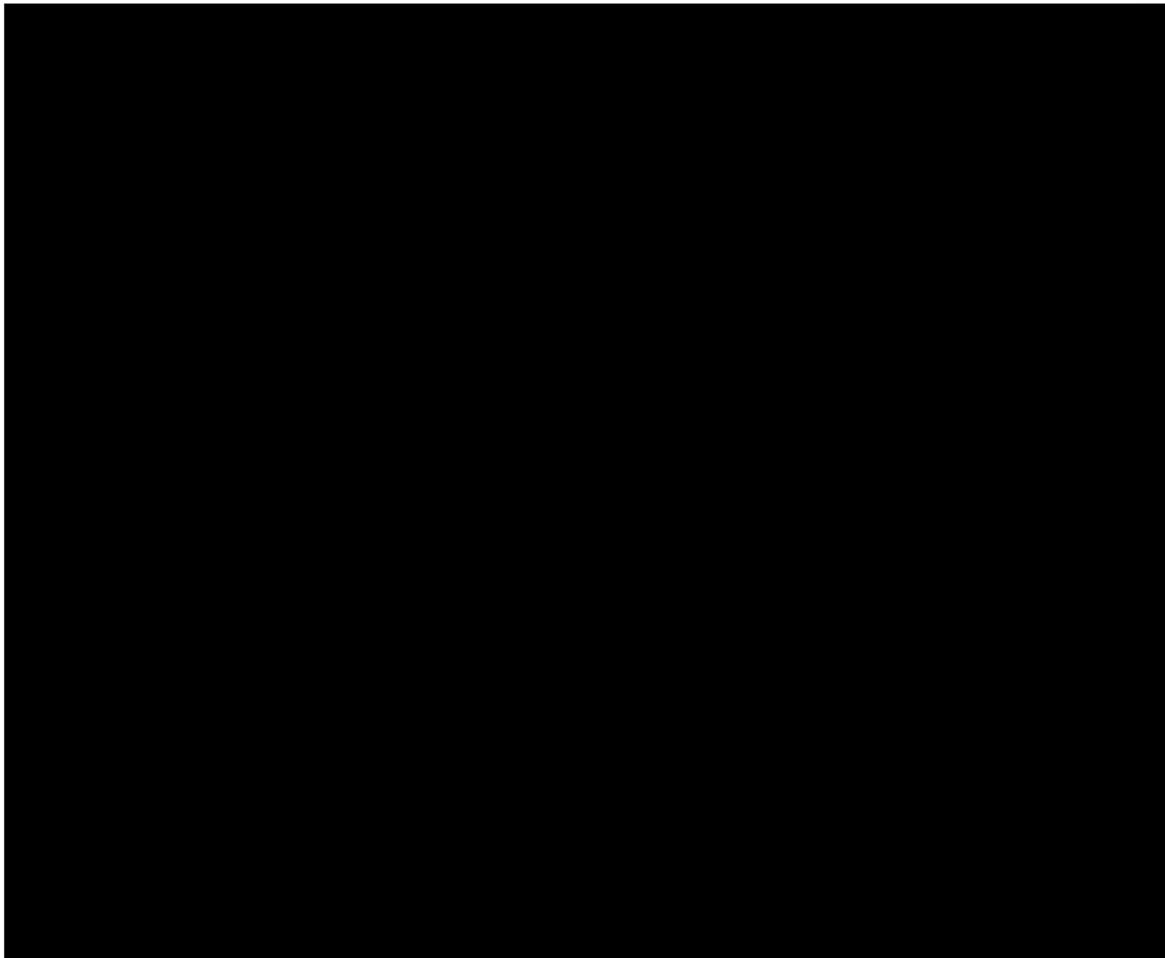
1 Q At least according to this information that you
2 received in 2007.

3 A Correct.

4 Q And do you believe you had information in 2007
5 that satisfied all three of these things?

6 A Yes.

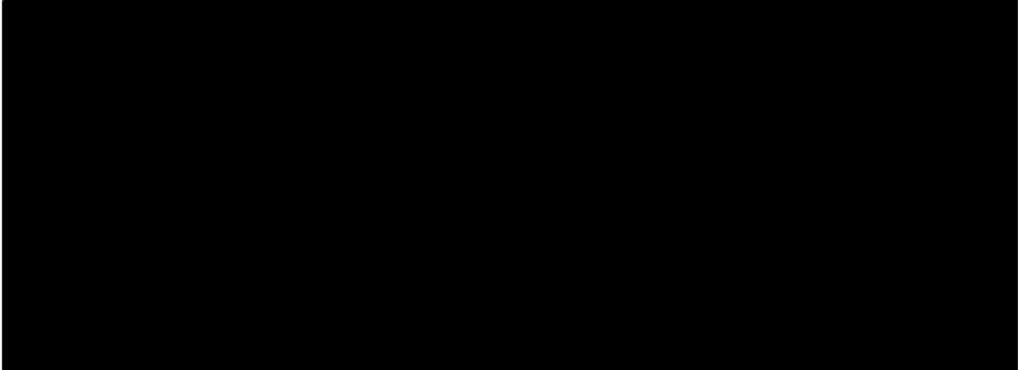
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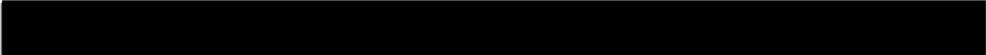
22 And so individually, [REDACTED]
23 it, people may have [REDACTED]
24
25



1 it in a mall in a self-automated kiosk.
2
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7



8 Q Well, your patent described the idea of the
9



10 your eyes. I'm forgetting your testimony, I'm
11 sorry.

12 A Nonmydriatic.

13 Q A nonmydriatic camera with a medical screening
14 kiosk that would be placed in public locations,
15 correct? That's in your patent, correct?

16 A Yes.

17 Q So that's public information, correct?

18 A Yes.

19 Q Do you have a memory of completing the form
20 that's attached to Exhibit 13 at Exhibit B, the
21 patent questionnaire?

22 A I don't have a recollection of it, no. And this
23 legal counsel was for SoloHealth?

24 Q I'm not sure that I know the answer to that.
25 This was produced to us from your files. So I'm

Page 107

1 not completely certain as to whether this was
2 your counsel or SoloHealth counsel at the time.

3 Do you have a memory of working with
4 Morris Manning in 2007?

5 A I've never heard of the law firm before.

6 MR. BUSH: I think it's a good time to
7 take a lunch break, at least quickly, if this is
8 good.

9 MR. INOENCIO: Sure.

10 THE VIDEOGRAPHER: We are off the record
11 and the time is 12:07 p.m.

12 (Break from 12:07 to 1:31 p.m.)

13 THE VIDEOGRAPHER: We are back on the
14 record and the time is 1:31 p.m.

15 BY MR. BUSH:

16 Q Going back on the record, Dr. Lavery.

17 We talked earlier about your ideas
18 around a business model. You told me you had a
19 number of conversations with Bart Foster around
20 improving the business model or iterations of the
21 business model. Do you remember that testimony?

22 A I do.

23 Q Did you ever tell Bart Foster in those
24 discussions about business model ideas which of
25 your ideas you deemed to be a trade secret?

Page 108

1 A So during the conversation, I never stopped and
2 earmarked, this is trade secret information.

3 I was working under the assumption that
4 we were in a collaborative agreement. We were --

5 [REDACTED]
6
7
8 I mean, we had lots and lots of
9 discussions about it. But there were never -- I
10 don't recall saying, this is a trade secret.

11 Q And the same question specific to your ideas
12 around a method for developing, implementing, and
13 expanding the usage of a medical screening kiosk.

14 In connection with those ideas, did you
15 ever explain to Mr. Foster which of those ideas
16 on your part you deemed to be trade secrets?

17 A No.

18 Q [REDACTED]
19
20
21 A [REDACTED]
22 Q [REDACTED]
23 A [REDACTED]
24 Q [REDACTED]
25

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2
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4 A I don't yet.

5 Q Please take your time.

6 A I do see that mentioned here, yes.

7 Q [REDACTED] that we've
8 marked as Exhibit 8, did you ever explain to
9 Bart Foster which of your ideas you believed to
10 be confidential information as opposed to trade
11 secrets?

12 A I never distinguished between the two, no.

13 Q You never distinguished between the two in your
14 own mind or you never distinguished between the
15 two in your conversations with Bart Foster?

16 A Not in my conversations with him. And I don't
17 know that I have the sophistication to
18 differentiate the two either.

19 Q So you sitting here today don't know which of
20 your ideas constitute confidential information
21 and which of your ideas constitute trade
22 secrets?

23 MR. INOENCIO: I'm going to object to
24 the extent that the question calls for the
25 witness to provide a legal conclusion.

1 BY MR. BUSH:

2 Q You can answer.

3 A Yeah, I'm thinking. Can you just repeat that
4 question again?

5 MR. BUSH: Yeah. Can you read it back?

6 (The last question was read back.)

7 THE WITNESS: That's probably a fair
8 statement.

9 BY MR. BUSH:

10 Q You don't know?

11 A Agree.

12 Q You're not able to distinguish between
13 confidential information and trade secrets in
14 connection with the ideas that you developed in
15 your collaborations with Bart Foster?

16 MR. INOENCIO: Same objection as
17 before, it calls for a legal conclusion.

18 THE WITNESS: I have an idea, but I
19 couldn't define it.

20 BY MR. BUSH:

21 Q And what is your idea about the difference
22 between confidential information and trade
23 secrets?

24 A So trade secrets to me would be the process and
25 methods by which you would bring something to

1 happen. The pathways they would flow through.
2 Sort of the schematic of everything. And then
3 filling in some of the details along that
4 flowchart schematic.

5 Versus confidential information may be
6 more a financial statement or knowing pieces --
7 little pieces of information. Opposed to -- to
8 me the trade secret is sort of the Coca-Cola
9 secret sauce definition you gave me -- the whole
10 recipe.

11 Q And what of your ideas -- let's mark as
12 Exhibit -- this document, this one-page document
13 which you prepared that's dated January 31st,
14 2023. We will mark that as -- I think it's
15 Exhibit 14.

16 THE WITNESS: Do you have another copy?
17 MR. INOENCIO: Yes.

18 (Exhibit 14 is marked.)

19 BY MR. BUSH:

20 Q Looking at the document we've marked as
21 Exhibit 14, is this a document that you prepared?

22 A I created this last night just sort of in
23 preparation, some notes to myself. So, yes, I
24 prepared it.

25 Q And looking at -- under the heading Kevin

1 Lavery's IP, what did you aim to capture in this
2 listing of 1 through 11?

3 A The things above and beyond the black and white
4 patent application and the patent that was
5 granted. The other components to what I brought
6 to the table at closing. The reason why Bart
7 wanted me as his business partner. The reason he
8 wanted the ideas guy at the table.

9 Q And when you say brought to the table, you're
10 saying these are things that you brought to the
11 table in terms of the relationship that you had
12 with SoloHealth beginning in 2007?

13 A Correct.

14 Q And this is your perspective about what you
15 brought to the table, correct?

16 A Correct.

17 Q This isn't necessarily Bart Foster's perspective
18 or anybody else's perspective, correct?

19 A That would be fair.

20 Q Looking at number one, it says internet
21 connectivity. Is that idea a trade secret or is
22 that confidential information?

23 A So it was in the patent. So at that point, it's
24 public information. So I don't know.

25 Q Okay. The same question with respect to number

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2
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4 A
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7 Q
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9 A No. These are notes to myself. It wasn't meant
10 to be submitted into evidence. It was just
11 talking points.

12 Q So this is -- this is meant to be talking points
13 rather than an exhaustive summary of your
14 intellectual property?

15 A Correct.

16 Q

17
18 Is that meant to describe a trade
19 secret or is that meant to describe confidential
20 information?

21 A At the time it was presented, that was a trade
22 secret.

23 Q And what was the time at which this was
24 presented, from your perspective?

25 A

1 Q And how was this information presented?

2 A Verbally to Bart, I'm sure.

3 Q And when you presented this information to Bart,
4 you didn't -- you didn't characterize it in your
5 conversations with Bart as a trade secret,
6 correct?

7 A Correct.

8 Q And the [REDACTED] retinal camera at number
9 two, that's also in the patent as well, correct?

10 A Correct.

11 Q [REDACTED]
12 Is this a description of a trade secret or a
13 description of confidential information?

14 A Perhaps more confidential information. But part
15 of that was -- we were reaching out to a national
16 organization to partner with to help sponsor us.
17 And so they became one of our visible partners.

18 And I don't know if the organization --
19 I can't remember the exact name. It might -- but
20 something to prevent blindness. And so we could
21 use these tools to get their interest in us.

22 Q And number five references business models. Is
23 that a reference to the business model ideas that
24 you testified about earlier?

25 A Yes.

1 Q That were the subject of your telephone
2 conversations with Bart Foster in 2007?

3 A Correct.

4 Q And were those ideas around business models, were
5 those trade secrets or were those confidential
6 information?

7 A Both.

8 Q What aspects of your business model ideas
9 constituted trade secrets as opposed to
10 confidential information?

11 MR. INOSENClO: Again, objection to
12 these questions to the extent they're calling for
13 a legal conclusion as it relates to what is
14 defined as a trade secret.

15 You may answer.

16 THE WITNESS: And I apologize, can you
17 ask that question again?

18 BY MR. BUSH:

19 Q Yeah. You said that the business model idea that
20 you've itemized here at number five --

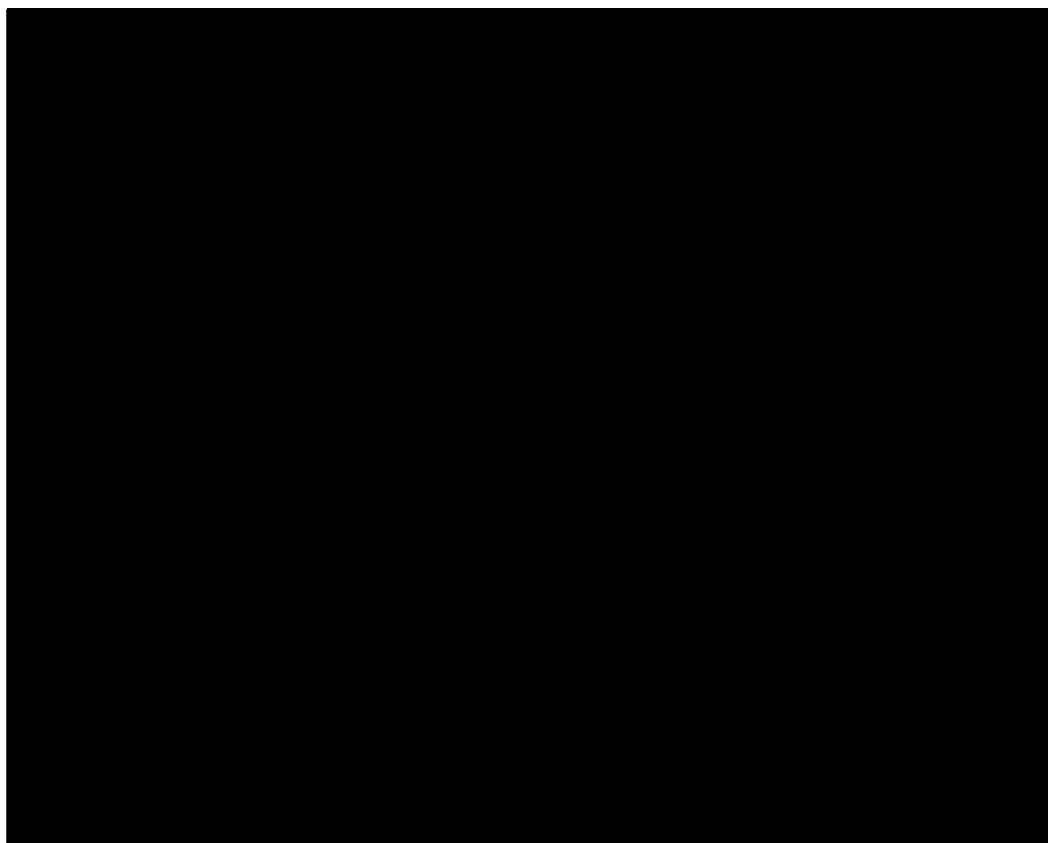
21 A Uh-hmm.

22 Q -- included both trade secrets and confidential
23 information. And I'm looking to understand
24 what -- how you distinguished between the two in
25 the subject area of business models.

1 Which of those ideas on your part were
2 trade secrets and which were confidential
3 information?

4 MR. INOSENCEO: Objection, form.

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18 That's how I would differentiate it. I
19 don't know if that's accurate, but that's in my
20 mind how it worked.

21 BY MR. BUSH:

22 Q 
23 Do you see that?

24 A I do.

25 Q And that's one dimension of your idea for a

1 business model?

2 A Correct.

3 Q And the idea of a [REDACTED]
4 directly, is that a trade secret or is that
5 confidential information?

6 MR. INOENCIO: Same objection.

7 THE WITNESS: I would look at that
8 mostly as a trade secret.

9 BY MR. BUSH:

10 Q And from your perspective, why does the idea of a
11 [REDACTED] constitute a
12 trade secret?

13 A Nobody had done it. Nobody has done it. People
14 do want to do it.

15 So making health care accessible was a
16 game changer. And this would allow patients to
17 say, you know, I don't have insurance, I can't
18 get to the doctor's today, it's hard to get
19 there.

20 [REDACTED]
21
22
23
24
25 [REDACTED]

1 thought that was possible at the time.

2 Q And -- go ahead.

3 A No.

4 Q Looking at what you referenced at 5-B,

5 [REDACTED]

6 [REDACTED]

7 referred. Do you see that?

8 A Yes, I do.

9 Q What idea is being captured in this descriptive
10 language at 5-B?

11 A So as we talked about earlier today, these

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 Quite frankly, if a patient comes into
25 my office looking for glasses, they're not going

1 to get the quality of care they would if they
2 went to an optometric office that sold glasses.

3 I don't sell glasses and we wouldn't
4 give them a good prescription. We wouldn't even
5 give them a prescription.

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10
11 Q

12 [REDACTED]
13 provider, is that in your mind a trade secret or
14 is that confidential information?

15 A That would be a trade secret.

16 Q And why is it that you believe that idea for

17 [REDACTED]
18 is a trade secret?

19 A I would qualify your question. [REDACTED]

20 [REDACTED]
21 machine. And nobody is still doing it, that I'm
22 aware of.

23 Q And looking at the descriptive information at
24 5-C, it starts with [REDACTED] Do you
25 see that?

1 A I do.

2 Q And what concept did you mean to capture in that
3 description?

4 A [REDACTED]

5

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12 Q And is that information that you've described at
13 5-C, in your mind is that a trade secret or is
14 that confidential information?

15 A As used by the kiosk, that would be a trade
16 secret. [REDACTED]

17 [REDACTED]

18 Q And 5-D references [REDACTED]

19 [REDACTED]

Do you see that?

20 A I do.

21 Q And what did you mean to convey in that language?

22 A [REDACTED]

23

24

25

1 patients.

2 Q [REDACTED]
3 [REDACTED] did you
4 conceive that in your mind to be a trade secret
5 or to be confidential information?

6 A A trade secret.

7 Q And why do you believe that idea is a trade
8 secret?

9 A Because when you think about the Yellow Pages,
10 it's sort of global. You can market a little bit
11 on a Yellow Page what you do and who you are and
12 what you're about.

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 If I can say I have a patient who has
19 [REDACTED]
20 [REDACTED]
21 that provider.

22 And we can go down the list with
23 glaucoma and [REDACTED] and all of the
24 other things that you can see on a retinal
25 camera.

1 Q And the [REDACTED] and the glaucoma,
2 those are all conditions that are referenced in
3 your patent, correct?

4 A That's not correct.

5 Q How is that not correct?

6 A I don't believe I mentioned [REDACTED]
7 in the patent.

8 Q You did mention glaucoma.

9 A I believe I did. I don't believe I mentioned
10 [REDACTED] in the patent.

11 Q And you did mention diabetes, correct?

12 A Correct.

13 Q And you did mention in the patent that other
14 conditions could be evaluated or assessed based
15 on the retinal scan, correct?

16 A Correct.

17 Q [REDACTED]

18 A [REDACTED]

19 A [REDACTED]

20 A [REDACTED]

21 A [REDACTED]

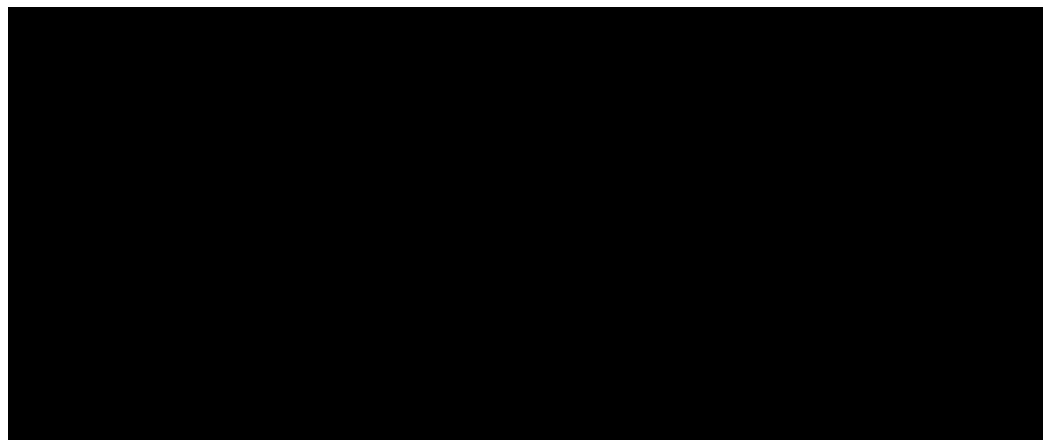
22 A [REDACTED]

23 A [REDACTED]

24 A [REDACTED]

25 A [REDACTED]

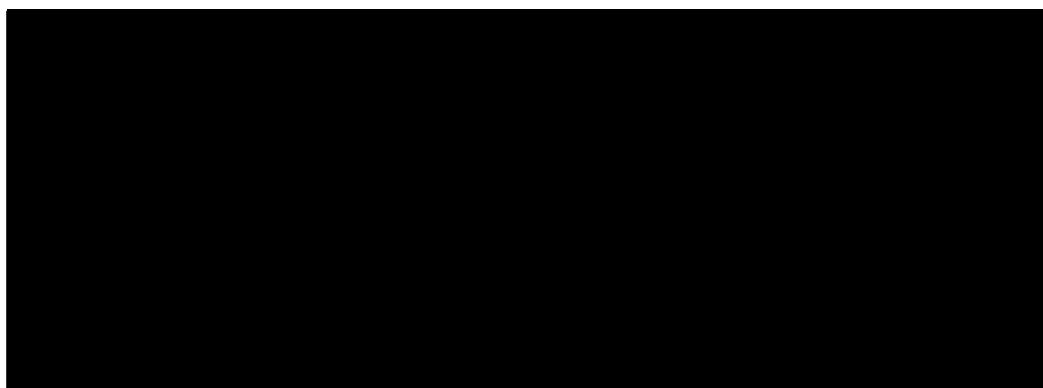
1 stores.
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9 Q And do you deem that idea to be a trade secret or
10 to be confidential information?
11 A Trade secret.
12 Q
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14 you mean by that?
15 A
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19 But in addition, I really thought that
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1 fashion but still be a potential huge revenue
2 stream for Pursuant Health.

3 Q And do you deem the idea of [REDACTED]

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11 [REDACTED]

12 So that's a little bit of both, a trade
13 secret and confidential information, creating a
14 new way to reach those patients who aren't being
15 reached.

16 Q And is it your testimony that all of the ideas
17 that are captured at 5-A through 5-F were the
18 subject of your conversations with Bart Foster
19 in 2007?

20 A Yes.

21 Q And it's also your testimony that in having these
22 conversations with Bart Foster, you didn't
23 designate any of these ideas at 5-A through 5-F
24 specifically as trade secrets, correct?

25 MR. INOENCIO: For clarification, do

1 you mean now or at the time?

2 BY MR. BUSH:

3 Q At the time.

4 A At the time, we were committed to making things
5 happen and I wanted to partly sell him on my idea
6 of why this was going to change the world.

7 But I did not designate it as --
8 probably designate -- but Bart, everything from
9 this forward is a trade secret.

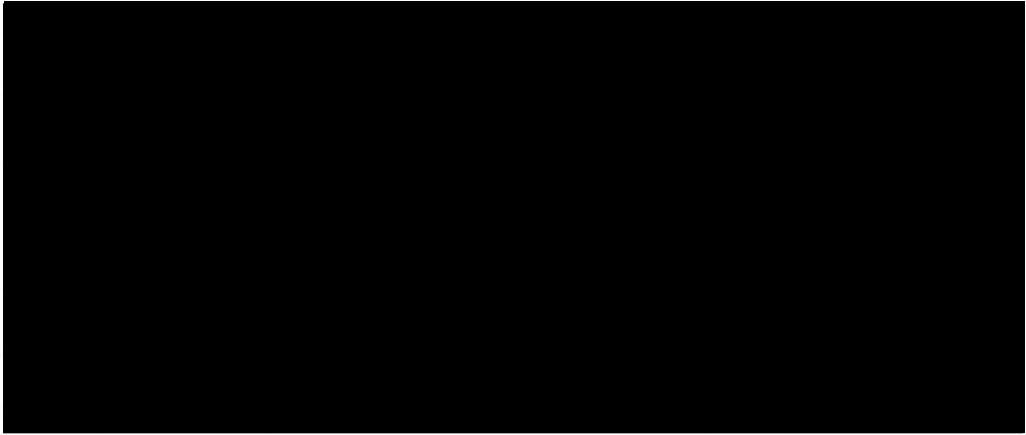
10 Q And number 6 references the demo video as a proof
11 of concept. Is that the same video or camera
12 stream that you testified about earlier that was
13 prepared by Mr. Hiremath in Australia?

14 A Correct.

15 Q Number 7 describes advertisers. What did you
16 mean to convey in what is reflected in number 7?

17 A I had a number of contacts in the industry and
18 was a consultant to companies. So I knew a lot

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Page 126

1 Q And [REDACTED]
2 kiosk, is that a concept that you deemed to be a
3 trade secret or something that you deemed to be
4 confidential information?

5 A [REDACTED] is pretty ubiquitous. So I might
6 file that -- knowing [REDACTED]
7 [REDACTED] is confidential information.

8 Q And number 8 describes [REDACTED]
9 [REDACTED] I know. Do
10 you see that?

11 A I do.

12 Q What did you mean to capture in that statement?

13 A So I had more significant conversations with some
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 Q And those [REDACTED] that are
19 captured in your number 8, those are -- those are
20 [REDACTED] you would deem to be confidential
21 information?

22 A Yes.

23 Q And not a trade secret, correct?

24 A Correct.

25 Q And number 9 references [REDACTED]

1

[REDACTED]
the machine. Do you see that?

2

A I do.

3

Q And what do you mean to reference with that
language?

4

A So specifically -- and I think a lot has changed,
but [REDACTED] And
so there's value in [REDACTED]

5

[REDACTED] It wouldn't be difficult to modify the

6

[REDACTED]
And that was not in the patent, but the
patent does talk about the diagnostic testing on
the side of the machine.

7

So other functionality that we could put
on the machine besides the blood pressure, which
they ultimately did, was glucose monitoring,
which was difficult to obtain back in 2000. The
[REDACTED] patients who needed
testing.

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Q And these ideas you've described for [REDACTED]

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1 [REDACTED] is this -- is this a concept that
2 you deemed to be confidential information or
3 something you deemed to be a trade secret?

4 A So both. The [REDACTED] would have been more just
5 confidential information, as an idea. It could
6 be a trade secret. Nobody is doing it out in the
7 mall like that. It's not accessible to the
8 public.

9 That's part of why it was going to break
10 down barriers because -- and be disruptive, that
11 [REDACTED] is one of those areas that's cartelled
12 off. You have to -- there's a lot of regulations
13 around it.

14 Q And number 10 references [REDACTED]

15 [REDACTED] And what do you mean to reference in
16 that -- in that topic?

17 A So at the time, it was more just -- I was an FDA
18 primary investigator-researcher on a number of
19 studies. So I know that people are looking for
20 [REDACTED]

21 That's what I spent a fair amount of time on.
22 [REDACTED]
23
24
25 [REDACTED]

1 Now today looking at it, I'd say [REDACTED]
2
3
4

5 Q And the [REDACTED] that you're describing in number 10,
6 is that something you deemed to be a trade secret
7 or confidential information?

8 A It would be a trade secret.

9 Q And why is it that you believe that [REDACTED]
10 [REDACTED] is a trade secret that you own?

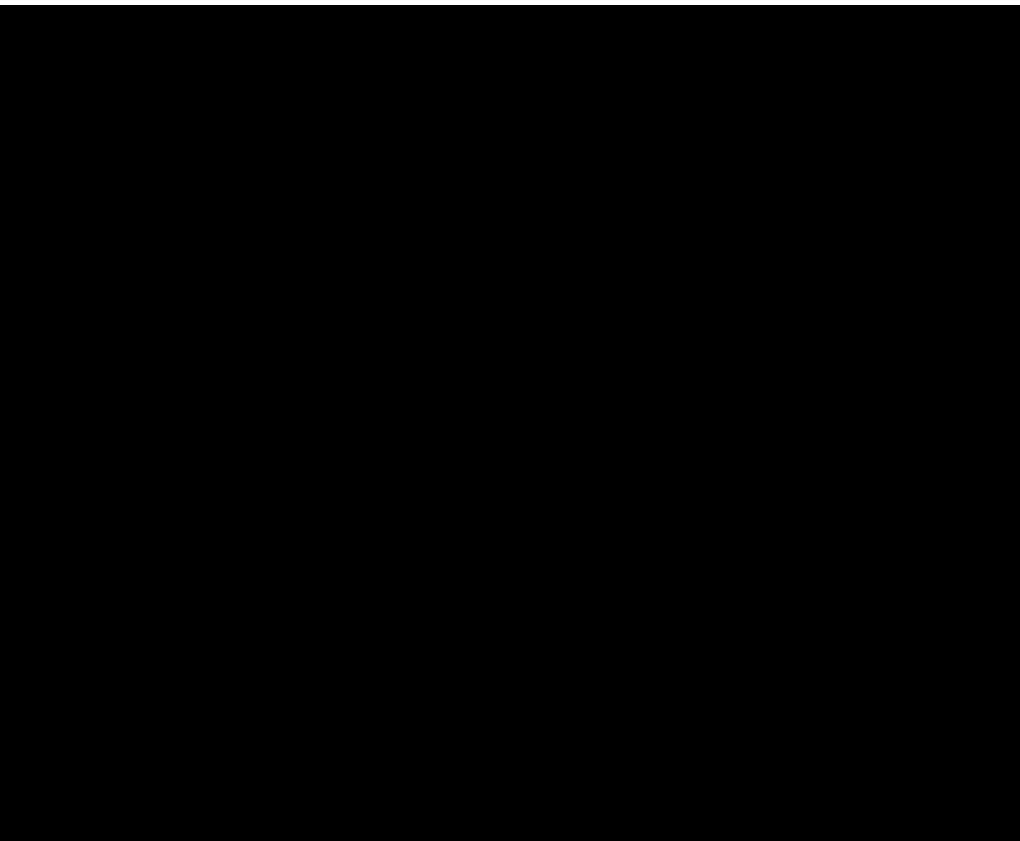
11 A So I don't own [REDACTED]
12 [REDACTED]
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24 even know what the number is. We had a clicker.
25 We had -- you could look and see what the actual

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1 rolling number was of how many people had used
2 the machine. I believe it got up to
3 two-and-a-half million a month. Or well over
4 thirty million. I don't even know what the
5 number is anymore.

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19 MR. INOENCIO: Just reminder to slow
20 down a little bit --

21 THE WITNESS: Sorry.

22 MR. INOENCIO: -- for Marilyn.

23 THE WITNESS: Sorry, Marilyn.

24 BY MR. BUSH:

25 Q And again, you're not taking the position that

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1 support optometry, we ultimately got scope of
2 practice legislation passed for optometry. We
3 fought a long battle for that.

4 So I experienced and knew what some of
5 the sensitivities were. And I wanted SoloHealth
6 to be sensitive to that and how we presented that
7 data, how we interacted with the optometrists in
8 a way that wasn't threatening to them was really
9 important.

10 Otherwise we would have been in trouble
11 before we got started.

12 Q And thinking about everything on this page that
13 we've talked about, 1 through 11, and all of the
14 ideas that you've described that are captured by
15 these -- by these -- by these notes that you made
16 last night, are you aware of any confidentiality
17 agreements specific to any of these ideas other
18 than the language that's in Exhibit 8 that we
19 looked at earlier?

20 A And Exhibit 8 is referencing what?

21 Q The [REDACTED]

22 A I'd have to look at the documents to know what
23 confidentiality we put in the contribution
24 agreement versus the [REDACTED]

25 Q Let me give you time to do that. You told me

1 earlier that you didn't know of any
2 confidentiality restrictions in the contribution
3 agreement that's marked as Exhibit 12, and we've
4 talked about the confidentiality language in the
5 document we marked as Exhibit 8.

6 A Okay.

7 Q And so my question is, other than the
8 confidentiality language in Exhibit 8 that we
9 talked about --

10 A Okay.

11 Q -- can you identify any other nondisclosure
12 agreement specific to any of these ideas that
13 you've testified about that are captured on
14 Exhibit 14?

15 A No.

16 Q And the contribution agreement that we marked as
17 Exhibit 12 has the Exhibit B for the disclosure
18 of intellectual property, correct? We looked at
19 that earlier.

20 A Can you reference what page that was? Oh,
21 that's --

22 Q It's Exhibit 12. It's the executed version of
23 the confidentiality -- of the contribution
24 agreement.

25 A Exhibit 12 is the -- is something different.

1 BY MR. BUSH:

2 Q So the ideas that are captured in your notes
3 that we marked as Exhibit 14, none of those are
4 specifically identified in the Exhibit B,
5 intellectual property, to the executed
6 contribution agreement that we marked as
7 Exhibit 9, right?

8 MR. INOSENCEO: Objection, asked and
9 answered.

10 You may answer.

11 THE WITNESS: Correct.

12 BY MR. BUSH:

13 Q Let's mark now the other documents that you
14 brought with you today. You brought a redline
15 version of [REDACTED] right? We'll
16 mark that as Exhibit 15.

17 MR. INOSENCEO: Do you have that in
18 front of you, Kevin?

19 THE WITNESS: I don't. Yeah, I
20 probably do. Yes, I do.

21 MR. INOSENCEO: Okay.

22 BY MR. BUSH:

23 Q So can you identify Exhibit 15 for the record?

24 MR. INOSENCEO: We have not marked that
25 yet, Joel. If we could just have a second.

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1 MR. BUSH: I thought -- I thought we
2 marked it. I'm sorry.

3 (Discussion off the record.)

4 (Exhibit 15 is marked.)

5 THE WITNESS: So I'm looking at a draft

6 [REDACTED]

7 [REDACTED]

8 BY MR. BUSH:

9 Q And this document we marked as Exhibit 15 is a
10 document that you brought with you today to the
11 deposition, correct?

12 A Correct.

13 Q And why did you bring Exhibit 15 to the
14 deposition today?

15 A It was something that I reviewed last night and
16 was in my folder.

17 Q Is there any reason you wanted to have a copy of
18 the redlined [REDACTED] instead of a copy
19 of the executed version of [REDACTED]

20 A I think it was the only one that was available
21 to me.

22 MR. BUSH: We will mark as Exhibit 16 --
23 (Exhibit 16 is marked.)

24 BY MR. BUSH:

25 Q Can you identify Exhibit 16 for the record?

1 A This is a redline version of the contribution
2 agreement of myself to SoloHealth, version .7.

3 Q And this redline version of the contribution
4 agreement that we marked as Exhibit 16 is a
5 document that you brought from your personal
6 files to the deposition today, correct?

7 A It was provided to me by counsel for review.

8 Q And why did you deem it important to bring the
9 document we've marked as Exhibit 16 to the
10 deposition today?

11 A Because it speaks to who I may have partnered
12 with and gave my -- one of my greatest life
13 inspirations to.

14 And I signed off on an agreement with
15 legal counsel's review on Saturday. This is --
16 this is the one that intersected the perpetual.
17 This was the agreement that was sent out on
18 Saturday around 2:00 for approval. I approved
19 it.

20 If you follow the email train, you know,
21 the hard and fast for me was there had to be a
22 perpetual royalty. Because all of this other
23 stuff was, you know, smoke and mirrors of sorts.

24 I didn't know if they were going to be
25 successful with the company. I didn't know if

1 they were going to make it happen.

2 One of the things in the [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 I mean, it was really important to me

8 to have this happen. I wasn't just signing over,

9 you know, the patent and being gone. But I

10 wanted -- [REDACTED] we started off

11 at three percent and then two percent and then it

12 got reduced down, and there were some caveats for

13 it to go up and down.

14 But at the end of the day, I said all

15 right, you know, I'm taking a reduced payment on

16 my royalty compared to [REDACTED] but I want that to

17 be a perpetual guaranteed royalty.

18 And the word perpetual was put in by

19 Brian Gordon in response to those emails of that

20 same week, leading up to that Saturday. We

21 signed off on the agreement. And unfortunately

22 that's not the agreement I signed.

23 Q And the document we marked as Exhibit 16 in

24 your testimony is the document -- the version of

25 the agreement that you approved on Saturday at

1 two p.m., is that your testimony?

2 A Two something p.m., but yes.

3 Q The Saturday before the execution of the final
4 document the following week?

5 A Correct.

6 MR. BUSH: And we'll mark Exhibit 17.

7 (Exhibit 17 is marked.)

8 THE WITNESS: Thank you.

9 BY MR. BUSH:

10 Q Can you identify Exhibit 17 for the record?

11 A This appears to be 7 without the redline
12 mark-ups.

13 Q When you say 7 without the redline mark-ups, what
14 you're saying is that Exhibit 17 is the same
15 document as the one we marked as Exhibit 16
16 except that Exhibit 17 does not have any
17 redlining?

18 A I believe so.

19 Q But otherwise Exhibit 17 and Exhibit 16 are the
20 same documents?

21 A I haven't read the whole thing, but I believe so.

22 Q And what was your reason for bringing the
23 document we marked as Exhibit 17 to the
24 deposition today?

25 A There wasn't any. Yeah, the same -- I --

1 Q It's just a document that you reviewed?

2 A Yeah. There was no hidden intention for having
3 two copies of it.

4 But to me the redline version is just
5 so striking because perpetual is in bright blue
6 in ink saying we have now inserted that as a --
7 as we've come to an understanding of what we've
8 agreed to and was delineated between Tom Spillane
9 and Brian Gordon as a reference to Bart Foster
10 and Kevin Lavery's discussion, we realize that
11 this is a deal breaker, he needs a perpetual
12 royalty if we're going to make this happen, and
13 he put the word perpetual in. That was really
14 big.

15 Q And your view is you're owed a perpetual royalty
16 even if your patent is expired?

17 A Absolutely.

18 Q Let's look at -- do you agree that the patent
19 that was issued in your name for which you were
20 named inventor, do you agree that that patent is
21 expired?

22 A I don't disagree with it. I'm not sent anything
23 from the patent office, so relying on what
24 Pursuant Health has told me, I believe it has
25 expired.

1 agreement, ' do you see that?

2 A Okay. Yes.

3 Q And going to the last line in that paragraph, you
4 write, 'unfortunately for both myself and
5 Pursuant, the retinal camera was not added on
6 during the life of the patent.' Do you see that?

7 A I do.

8 Q Was that a true statement when you wrote this
9 email in January of 2022?

10 A I believe it to be.

11 Q And you reference the life of the patent in this
12 sentence. What did you mean by the life of the
13 patent?

14 A Until the expiration date of the patent.

15 Q So your point in making this statement was that
16 the retinal camera had not been added by Pursuant
17 Health before the expiration date of your patent,
18 correct?

19 A Correct.

20 Q Let's look at what we will mark as 21.

21 (Exhibit 21 is marked.)

22 BY MR. BUSH:

23 Q Do you recognize the document we've marked as
24 Exhibit 21?

25 A I recognize what it is.

1 Q And can you tell me what it is?

2 A It looks like the complaint that was filed

3 against Pursuant Health.

4 Q And this is the complaint that you filed against

5 Pursuant Health, correct?

6 A Correct.

7 Q Did you read this pleading before it was filed?

8 A I did.

9 Q Do you believe it's true and accurate?

10 A I do.

11 Q Look with me at paragraph 50. It's on page ten.

12 A I'm sorry, page 50?

13 Q Paragraph 50, page ten. And paragraph 50 alleges

14 that Pursuant Health came to manufacture and

15 market a retinal scan kiosk. Do you see that?

16 A I don't see that, no. Paragraph 50?

17 Q Paragraph 50. 'Although the retinal scan kiosk

18 came to be manufactured, marketed and sold,' do

19 you see that?

20 A I do see that, yes.

21 Q And that statement is not correct, is it?

22 A So although the retinal camera has not been made

23 operational yet, I know they were diligently

24 working on it and don't know that they don't have

25 a full unit ready to go.

1 So the last one I saw, there was a
2 prototype with a retinal camera in it. So I
3 don't know that this is a false statement.

4 Q So paragraph 50 doesn't reference a prototype,
5 correct?

6 A It doesn't say it's in the marketplace either.

7 Q It says marketed and sold, right? Paragraph 50
8 references a retinal scan kiosk that came to be
9 manufactured, marketed, and sold.

10 Do you know of a retinal scan kiosk
11 that Pursuant Health has manufactured, marketed,
12 and sold?

13 A So -- no.

14 Q Let's look at paragraph 22. Do you believe that
15 the allegations in paragraph 22 are factually
16 correct?

17 A Yes.

18 Q Do you believe that the health and wellness kiosk
19 developed by Pursuant Health is based on a trade
20 secret that you developed?

21 A Yes.

22 Q What is the trade secret that you developed that
23 forms the basis for the Pursuant Health kiosk?

24 A [REDACTED]

25 And I saw a t-shirt of mine this morning that

1 said SoloHealth. On the back it says, you know,
2 make your change a reality or something, you
3 know. Take charge of your health, you know.

4 [REDACTED]

5

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12 Those are all my ideas, you know. And
13 so -- or a lot of them are. And they're jointly,
14 you know, some of them are jointly. But that was
15 what we put together. And so, yes, those were my
16 information to make that happen.

17 Q And you say jointly. Ideas that you had along
18 with Mr. Bart Foster?

19 A A lot of things were discussed. And so as things
20 morph and evolve, I'd have to go through each
21 item and say this was my idea, this was his idea,
22 he wanted green, I wanted red, whatever it is.

23 Q And you haven't found occasion to do that as of
24 today, have you?

25 A I have not.

1 MR. INOENCIO: Objection.

2 THE WITNESS: Sorry.

3 BY MR. BUSH:

4 Q And you said that part of your ideas that are
5 imbedded in the current kiosk are the fact that
6 it is connected to the internet. That's a
7 concept that's in your patent, correct?

8 A Correct.

9 Q

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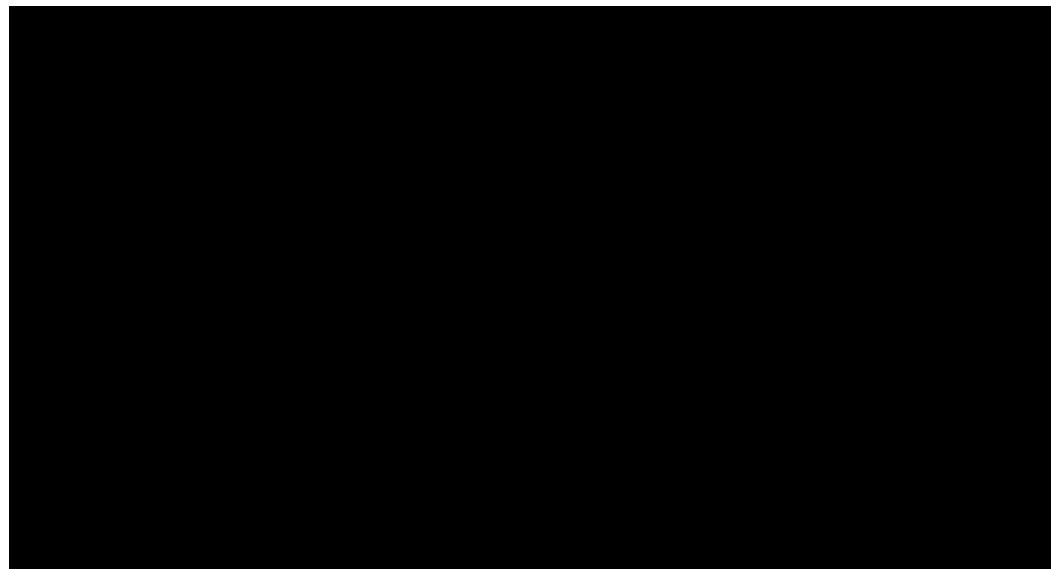
13 A

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17

A large rectangular area of the document has been completely redacted with a solid black color, obscuring several lines of text. The redaction starts below the question from line 9 and continues through line 17.

18 MR. BUSH: Respectfully I'm goin to move
19 to strike as non-responsive. That wasn't -- that
20 wasn't my question.

21 BY MR. BUSH:

22 Q My question was, your patent references the
23 capacity of the kiosk as you envisioned it to
24 capture medical information above and different
25 from vision tests, correct?